

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WAYNE A. JACKSON,

Petitioner,

v.

HAROLD WICKHAM, et al.,

Respondents.

Case No. 3:17-cv-00098-LRH-WGC

ORDER

Wayne A. Jackson's pro se 28 U.S.C. § 2254 petition for writ of habeas corpus is before the court for final disposition on the merits (ECF No. 8). As discussed below, the petition is denied.

I. Procedural History and Background

The charges in this case arose from an anonymous tip law enforcement received that the two-year-old son of Jackson's housemate was sick and not being cared for and that narcotic sales and manufacturing were occurring at the house (see exhibit 8).¹ He was charged in Churchill County, Nevada, by way of information with trafficking in a controlled substance – 28 grams or more; operating or maintaining place for unlawful sale, gift or use of controlled substance; offer, attempt or commission of unauthorized act relating to manufacture or compounding of certain controlled substances; abuse, neglect or endangerment of a child; allowing child to be present during commission of certain violations which involve controlled substances other than marijuana; and possession of dangerous drug without prescription. Exh. 8. Jackson ultimately entered a guilty plea to trafficking in a controlled substance – 28 grams or more. Exh. 19.

¹ Exhibits referenced in this order are exhibits to respondents' motion to dismiss, ECF No. 14, and are found at ECF Nos. 16-18.

1 The state district court sentenced Jackson to a term of 10 years to life. Exh. 24.
2 Jackson did not file a direct appeal. He filed a state postconviction petition. Exhs. 29,
3 48. The state district court conducted an evidentiary hearing and thereafter dismissed
4 the petition. Exhs. 52, 53. The Nevada Court of Appeals affirmed. Exhs. 60.

5 Jackson's federal petition sets forth 3 grounds for relief based on ineffective
6 assistance of counsel (ECF No. 8). Respondents have answered the petition, and
7 Jackson replied (ECF Nos. 28, 32).

8 **II. Legal Standards**

9 **a. AEDPA Standard of Review**

10 28 U.S.C. § 2254(d), a provision of the Antiterrorism and Effective Death Penalty
11 Act (AEDPA), provides the legal standards for this court's consideration of the petition in
12 this case:

13 An application for a writ of habeas corpus on behalf of a person in
14 custody pursuant to the judgment of a State court shall not be granted with
15 respect to any claim that was adjudicated on the merits in State court
16 proceedings unless the adjudication of the claim —

17 (1) resulted in a decision that was contrary to, or involved an
18 unreasonable application of, clearly established Federal law, as
19 determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable
determination of the facts in light of the evidence presented in the State
court proceeding.

20 The AEDPA "modified a federal habeas court's role in reviewing state prisoner
21 applications in order to prevent federal habeas 'retrials' and to ensure that state-court
22 convictions are given effect to the extent possible under law." *Bell v. Cone*, 535 U.S.
23 685, 693-694 (2002). This court's ability to grant a writ is limited to cases where "there is
24 no possibility fair-minded jurists could disagree that the state court's decision conflicts
25 with [Supreme Court] precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011). The
26 Supreme Court has emphasized "that even a strong case for relief does not mean the
27 state court's contrary conclusion was unreasonable." *Id.* (citing *Lockyer v. Andrade*, 538
28 U.S. 63, 75 (2003)); *see also Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (describing

1 the AEDPA standard as “a difficult to meet and highly deferential standard for evaluating
2 state-court rulings, which demands that state-court decisions be given the benefit of the
3 doubt”) (internal quotation marks and citations omitted).

4 A state court decision is contrary to clearly established Supreme Court precedent,
5 within the meaning of 28 U.S.C. § 2254, “if the state court applies a rule that contradicts
6 the governing law set forth in [the Supreme Court’s] cases” or “if the state court
7 confronts a set of facts that are materially indistinguishable from a decision of [the
8 Supreme Court] and nevertheless arrives at a result different from [the Supreme
9 Court’s] precedent.” *Lockyer*, 538 U.S. at 73 (quoting *Williams v. Taylor*, 529 U.S. 362,
10 405-06 (2000), and citing *Bell*, 535 U.S. at 694).

11 A state court decision is an unreasonable application of clearly established Supreme
12 Court precedent, within the meaning of 28 U.S.C. § 2254(d), “if the state court identifies
13 the correct governing legal principle from [the Supreme Court’s] decisions but
14 unreasonably applies that principle to the facts of the prisoner’s case.” *Lockyer*, 538
15 U.S. at 74 (quoting *Williams*, 529 U.S. at 413). The “unreasonable application” clause
16 requires the state court decision to be more than incorrect or erroneous; the state
17 court’s application of clearly established law must be objectively unreasonable. *Id.*
18 (quoting *Williams*, 529 U.S. at 409).

19 To the extent that the state court’s factual findings are challenged, the
20 “unreasonable determination of fact” clause of § 2254(d)(2) controls on federal habeas
21 review. *E.g.*, *Lambert v. Blodgett*, 393 F.3d 943, 972 (9th Cir.2004). This clause
22 requires that the federal courts “must be particularly deferential” to state court factual
23 determinations. *Id.* The governing standard is not satisfied by a showing merely that the
24 state court finding was “clearly erroneous.” 393 F.3d at 973. Rather, AEDPA requires
25 substantially more deference:

26 [I]n concluding that a state-court finding is unsupported by
27 substantial evidence in the state-court record, it is not enough that we
28 would reverse in similar circumstances if this were an appeal from a
district court decision. Rather, we must be convinced that an appellate

1 panel, applying the normal standards of appellate review, could not
2 reasonably conclude that the finding is supported by the record.

3 *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir.2004); *see also Lambert*, 393
4 F.3d at 972.

5 Under 28 U.S.C. § 2254(e)(1), state court factual findings are presumed to be
6 correct unless rebutted by clear and convincing evidence. The petitioner bears the
7 burden of proving by a preponderance of the evidence that he is entitled to habeas
8 relief. *Cullen*, 563 U.S. at 181.

9 **b. Ineffective Assistance of Counsel**

10 Ineffective Assistance of Counsel (IAC) claims are governed by the two-part test
11 announced in *Strickland v. Washington*, 466 U.S. 668 (1984). In *Strickland*, the
12 Supreme Court held that a petitioner claiming ineffective assistance of counsel has the
13 burden of demonstrating that (1) the attorney made errors so serious that he or she was
14 not functioning as the “counsel” guaranteed by the Sixth Amendment, and (2) that the
15 deficient performance prejudiced the defense. *Williams*, 529 U.S. at 390-91 (citing
16 *Strickland*, 466 U.S. at 687). To establish ineffectiveness, the defendant must show that
17 counsel’s representation fell below an objective standard of reasonableness. *Id.* To
18 establish prejudice, the defendant must show that there is a reasonable probability that,
19 but for counsel’s unprofessional errors, the result of the proceeding would have been
20 different. *Id.* A reasonable probability is “probability sufficient to undermine confidence in
21 the outcome.” *Id.* Additionally, any review of the attorney’s performance must be “highly
22 deferential” and must adopt counsel’s perspective at the time of the challenged conduct,
23 in order to avoid the distorting effects of hindsight. *Strickland*, 466 U.S. at 689. It is the
24 petitioner’s burden to overcome the presumption that counsel’s actions might be
25 considered sound trial strategy. *Id.*

26 Ineffective assistance of counsel under *Strickland* requires a showing of deficient
27 performance of counsel resulting in prejudice, “with performance being measured
28 against an objective standard of reasonableness, . . . under prevailing professional

1 norms.” *Rompilla v. Beard*, 545 U.S. 374, 380 (2005) (internal quotations and citations
2 omitted). When the ineffective assistance of counsel claim is based on a challenge to a
3 guilty plea, the *Strickland* prejudice prong requires a petitioner to demonstrate “that
4 there is a reasonable probability that, but for counsel’s errors, he would not have
5 pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52,
6 59 (1985).

7 If the state court has already rejected an ineffective assistance claim, a federal
8 habeas court may only grant relief if that decision was contrary to, or an unreasonable
9 application of, the *Strickland* standard. See *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003).
10 There is a strong presumption that counsel’s conduct falls within the wide range of
11 reasonable professional assistance. *Id.*

12 The United States Supreme Court has described federal review of a state supreme
13 court’s decision on a claim of ineffective assistance of counsel as “doubly deferential.”
14 *Cullen*, 563 U.S. at 190 (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009)).
15 The Supreme Court emphasized that: “We take a ‘highly deferential’ look at counsel’s
16 performance . . . through the ‘deferential lens of § 2254(d).” *Id.* at 1403 (internal
17 citations omitted). Moreover, federal habeas review of an ineffective assistance of
18 counsel claim is limited to the record before the state court that adjudicated the claim on
19 the merits. *Cullen*, 563 U.S. at 181-84. The United States Supreme Court has
20 specifically reaffirmed the extensive deference owed to a state court’s decision
21 regarding claims of ineffective assistance of counsel:

22 Establishing that a state court’s application of *Strickland* was
23 unreasonable under § 2254(d) is all the more difficult. The standards
24 created by *Strickland* and § 2254(d) are both “highly deferential,” *id.* at
25 689, 104 S.Ct. 2052; *Lindh v. Murphy*, 521 U.S. 320, 333, n.7, 117 S.Ct.
26 2059, 138 L.Ed.2d 481 (1997), and when the two apply in tandem, review
27 is “doubly” so, *Knowles*, 556 U.S. at 123. The *Strickland* standard is a
28 general one, so the range of reasonable applications is substantial. 556
U.S. at 124. Federal habeas courts must guard against the danger of
equating unreasonableness under *Strickland* with unreasonableness
under § 2254(d). When § 2254(d) applies, the question is whether there is
any reasonable argument that counsel satisfied *Strickland*’s deferential
standard.

1 *Harrington*, 562 U.S. at 105. “A court considering a claim of ineffective assistance of
2 counsel must apply a ‘strong presumption’ that counsel’s representation was within the
3 ‘wide range’ of reasonable professional assistance.” *Id.* at 104 (quoting *Strickland*, 466
4 U.S. at 689). “The question is whether an attorney’s representation amounted to
5 incompetence under prevailing professional norms, not whether it deviated from best
6 practices or most common custom.” *Id.* (internal quotations and citations omitted).

7 Jackson pleaded guilty upon the advice of counsel, thus he “may only attack the
8 voluntary and intelligent character of the guilty plea by showing that the advice he
9 received from counsel was [ineffective] . . . and that there is a reasonable probability
10 that, but for counsel’s errors, he would not have pleaded guilty and would have insisted
11 on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 56-57, 59 (1985); *Lambert v. Blodgett*,
12 393 F.3d 943, 980-981 (9th Cir. 2004).

13 **III. Instant Petition**

14 **Ground 1**

15 Jackson contends that his plea counsel was ineffective for failing: to discuss the law
16 in conjunction with the facts of his case to determine whether to file a motion to
17 suppress; to assist him in making an informed decision as to the strengths and
18 weaknesses of the case; and to file a meritorious motion to suppress. He also argues
19 that counsel failed to review the preliminary hearing transcript or a copy of the search
20 warrant affidavit with him (ECF No. 8, pp. 3-6).

21 At Jackson’s evidentiary hearing on his state postconviction petition, his plea
22 counsel, Justin Clouser, testified that he had been retained to try to get the case
23 negotiated and resolved as quickly as possible. Exh. 52, pp. 6-48. Clouser also
24 explained:

25 A: Well, at the point that I was retained this case was already six
26 months old, so there was – there was preliminary work that had already
27 been done, and at the point where I was retained it was a matter of trying
28 to get this done as quickly as possible, get this case over with.

1 I believe Mr. Jackson was under daily drug tests and he just wanted
2 this done, and so my – my scope of representation was not as thorough or
3 as extensive as it might have been if I'd been retained to take this case to
trial. . . .

4 Q: Did you ever talk to Mr. Jackson about the potential of suppressing
5 the evidence in any way?

6 A: We talked about the evidence in great detail a number of times.

7 Q: Okay, Well, the evidence was available to present at trial –

8 A: Right.

9 Q: --correct? Did you talk about –talk about the aspect, legal concept,
10 that any of the evidence could have been suppressed?

11 A: We talked about the validity of the evidence, the entire process of
12 how the search took place. We had those discussions, yes. . .

13 *Id.* at 20-23.

14 Counsel further testified that he and Jackson discussed the search warrant and the
15 search itself and that Jackson went into great detail about how that day had unfolded.
16 Counsel discussed with Jackson the discrepancies between what Jackson was telling
17 him and the police report. They also discussed what his housemate, Wendy Lattin (the
18 mother of the child in question), would likely say. Counsel testified that he and Jackson
19 discussed possible challenges to the search warrant, which he described as:

20 A: Well, the fact that if they were doing something, I believe that it was
21 his belief that he just gave them permission to do a visual search and that
22 the pipe, I think, had been found in a drawer that was easily accessible to
23 the child, from my understanding, and we talked about the potential for
trying to fight that and where that would go, and the reality was that based
24 upon the consent that was given where the child had access to the house
that yes, we could spend the time, but the chances of success based upon
[the housemate's] own testimony, the chances of success for suppressing
the evidence was virtually zero.

25 *Id.* at 28-29.

26 Clouser testified that he talked with his client about the weaknesses of their case,
27 including the amount of methamphetamine found (after police later returned with a
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1 search warrant) and the fact that Lattin would likely testify to anything that would
2 possibly get her a reduction in charges, which likely meant she would try to lay all blame
3 on Jackson. Counsel said he and Jackson discussed options for fighting the charges,
4 but that Jackson was not interested in a protracted fight at that time, and Jackson told
5 his counsel that he did not want to go to trial. Clouser insisted that he communicated
6 frequently with Jackson, that it was a tough case given Lattin's testimony, and that he
7 followed and carried out Jackson's instructions.

8 Jackson also testified. Exh. 52, pp. 48-112. He stated that when officers arrived and
9 told him that they were there for a welfare check of the two-year-old, Jackson told the
10 officers they were permitted to inspect the areas of the house to which the boy had
11 access. Jackson said he specified the areas as the living room and master bedroom.
12 Looking at photographs, Jackson said that another bedroom was not the boy's room at
13 that time, but that it was in the process of being renovated and that it was supposed to
14 be a place for the child to sleep in the future. He said that the bedroom contained no
15 bedding or clothes. He testified that, though he had given limited consent, the police
16 "came in and kind of fanned out into everywhere." *Id.* at 68. He said he followed an
17 officer into the sewing room, told him that was not one of the rooms he had agreed to let
18 them search, and the officer said they were going to search everywhere. Jackson told
19 the officer that was not what he agreed to and asked them to leave. The officer walked
20 back to the living room and announced that Jackson had rescinded his consent to
21 search. After that other officers emerged from the uninhabited room that was under
22 renovation and said that they had found a pipe. At that point, an officer left to obtain a
23 search warrant, while Jackson waited with the other police.

24 He testified that when Clouser represented him he never received a copy of the
25 search warrant. Jackson stated that Clouser never informed him of ways to challenge
26 the admissibility of the evidence and only told him that the case against him was strong.

1 He testified that even though he wanted to negotiate the case, he expected his
2 counsel to explain what legal challenges could be raised.

3 On cross-examination Jackson acknowledged that there were probably some toys
4 as well as clothing belonging to Lattin in the bedroom in question. Jackson told officers
5 that he was getting the room ready for the child. Jackson said as he recalled he told
6 police that they could search the rooms that the boy had access to, an officer
7 responded by saying "the rooms that he slept in," and Jackson said yes. He also
8 agreed that he had read and understood the guilty plea. On redirect, Jackson clarified
9 that any items in the bedroom in question were not usable but were more akin to junk or
10 trash that had been discarded by Lattin.

11 Sergeant Lee Orozco testified. Exh. 52, pt. 2, pp. 114-130. He stated that they were
12 invited into the residence, and that they told Jackson they were there on a child welfare
13 check and to investigate reports of drug activity. He said he told Jackson "after we take
14 care of the child part" that they would like to be able to search the house to make sure
15 there was no drug activity. *Id.* at 118. Orozco testified that Jackson said, "go ahead, you
16 can search wherever." *Id.* He said that he was talking with Jackson as he searched the
17 utility room and that after about three or four minutes, Jackson revoked consent. Orozco
18 then returned to the living room.

19 On cross-examination, Orozco clarified that Jackson had limited the search to the
20 child's room or where the child slept and the sewing/utility room.

21 Officer Tony Vierra testified that Jackson gave the officers permission to search only
22 the rooms to which the child had access. Exh. 52, pp. 131-155. He said he and
23 another officer searched the bedroom that Jackson said they were renovating; Vierra
24 said that it was the child's room and had diapers and other child items in it. The other
25 officer opened the dresser drawer and a methamphetamine pipe rolled from the back of
26 the drawer to the front. He stated that they found the pipe almost immediately after
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1 entering the room and that shortly after they found it Orozco announced that Jackson
2 had withdrawn consent.

3 The Nevada Court of Appeals affirmed the denial of this claim in Jackson's state
4 postconviction petition:

5 First, Jackson argues that his counsel was ineffective for failing to
6 reasonably investigate the circumstances and the law regarding the
7 search of Jackson's residence. Jackson asserts counsel should have
8 discussed this matter with him in detail and reviewed documentation
9 related to the search, as counsel would have then decided to file a motion
to suppress the evidence obtained during the search. Jackson failed to
demonstrate his counsel's performance was deficient or resulting in
prejudice.

10 At the evidentiary hearing, Jackson's counsel testified that he
discussed the evidence and the entire process of the search with Jackson,
11 including Jackson's consent to search and the search warrant. Counsel
stated he and Jackson discussed possible challenges to the search, but
12 that counsel concluded there was little chance of success had they sought
to suppress the evidence. Counsel further testified that Jackson had
13 retained him with the specific purpose of negotiating a plea agreement
and the majority of counsel's efforts went towards securing a favorable
14 agreement. Based upon that testimony, the district court concluded
counsel acted in an objectively reasonable manner and substantial
15 evidence supports that conclusion. Jackson failed to demonstrate a
reasonable probability of a different outcome had counsel had further
16 discussions with Jackson or reviewed the search documentation in further
detail. Therefore, we conclude the district court did not err in denying this
17 claim.

18 Exh. 60, p. 2.

19 Jackson faced six serious criminal counts, and counsel's plea negotiations resulted
20 in an agreement to plead guilty to a single, albeit serious, count. Officers testified on
21 postconviction review that they found the methamphetamine pipe almost immediately
22 upon entering a room that they understood to be the child's room or to which the child
23 had access and that they ceased the search when Jackson revoked consent.
24 Jackson's testimony did not even directly contradict the officers. Clouser testified that
25 although he was retained to focus on plea negotiations, he discussed the search and
26 the other aspects of the case with Jackson in detail. Jackson has not shown a
27 reasonable probability of a different outcome had his counsel discussed the search
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1 further with him. Jackson has failed to demonstrate that the Nevada Court of Appeals'
2 decision was contrary to or involved an unreasonable application of *Strickland*. 28
3 U.S.C. § 2254(d). Federal habeas relief is denied as to ground 1.

4 **Ground 2**

5 Jackson argues that his counsel was ineffective for failing to file a motion to
6 suppress the evidence seized during the search of his residence because Jackson
7 limited the scope of his consent to the specific rooms to which the child had access
8 (ECF No. 8, pp. 7-9).

9 Officer Vierra further testified at the evidentiary hearing:

10 Q: So while you were in this uninhabited room, the room that has the
11 dresser, did Mr. Jackson say wait, wait a minute, that's the wrong room?

12 A: No.

13 Q: Did he say anything like that?

14 A: No.

15 Q: Did he indicate that that wasn't the room he meant?

16 A: No.

17 Exh. 52, pt. 2, pp. 136-137.

18 The Nevada Court of Appeals held that Jackson failed to show that his counsel's
19 performance was deficient or that he suffered any prejudice:

20 During the evidentiary hearing, testimony revealed that officers initially
21 entered Jackson's residence and advised Jackson they had received
22 information that a young child was possibly neglected and exposed to
23 drug activity. Jackson initially consented to a search of areas of the home
24 to which the child had access. Officers testified that they searched a room
25 they understood to be the young child's bedroom and discovered the pipe
26 in a dresser drawer. Following the discovery of the pipe, Jackson
27 withdrew his consent to search. The district court noted that the testimony
28 provided at the hearing included information that the child's diaper was in
the room, there appeared to be nothing to prevent the child from
accessing the room, and Jackson did not object when the officers entered
the room to search it. Based upon this testimony, the district court
concluded Jackson had consented to the search of this room and
substantial evidence supports that conclusion. See *Canada v. State*, 756
P.2d 552, 553 (Nev. 1988) ("Whether consent has been exceeded is a

1 factual question to be determined by examining the totality of the
2 circumstances.”).

3 Given the record demonstrating that Jackson consented to the search
4 of the child's room, he failed to demonstrate a reasonable probability of a
5 different outcome had counsel filed a motion to suppress the evidence
6 obtained during the search pursuant to his consent. Therefore, the district
7 court did not err in denying this claim.

8 Exh. 60, pp. 3-4.

9 The testimony recounted in this order again supports the Nevada Court of Appeals'
10 decision as to this claim. Jackson has not shown that the Nevada Court of Appeals'
11 decision was contrary to or involved an unreasonable application of *Strickland*. 28
12 U.S.C. § 2254(d). Ground 2 is, therefore, denied.

13 **Ground 3**

14 Jackson claims that his counsel was ineffective because counsel was unable to
15 discuss the law regarding the inclusion of false information or omission of information in
16 an affidavit, and therefore failed to file a motion to suppress based on the theory that the
17 affidavit contained false statements and omitted material facts (ECF No. 8, pp. 10-13).
18 In particular, Jackson argues that his limitation of the search was omitted.

19 Officer Viera also testified at the evidentiary hearing as follows:

20 Q: Did you at any time tell [Jackson] you would be applying for a
21 search warrant?

22 A: Yeah. Once I talked to him about the meth pipe and asked who it
23 belonged to, they both denied that it was theirs. I believe they said it
24 possibly belonged to an old renter they had.

25 I advised them at that point I was going to contact the D.A.'s office and
26 try to obtain a search warrant for the rest of the house for any more
27 paraphernalia or other narcotics.

28 Q: Did you apply for the search warrant?

A: I did.

Q: Did you sign the affidavit in support of the search warrant?

A: I did.

Q: Was there anything in that document that wasn't truthful?

A: No.

1 Q: Anything that you falsified?

2 A: No.

3 Exh. 52, pt. 2, pp. 137-138.

4 Further, Jackson's counsel testified:

5 Q: But you did discuss the search warrant with Mr. Jackson?

6 A: Oh, yes, how the events of that whole day unfolded.

7 Q: Based on what he told you, did any issues cause you concern?

8 A: No.

9 Q: So Mr. Jackson, he told you he didn't want to go to trial?

10 A: Yes.

11 Q: Why?

12 A: Because of the potential for what all the charges were were
13 significant, and if he could avoid that, he wanted to avoid that. It was like
six charges.

14 Q: So he wanted to avoid a possible lengthy sentence?

15 A: Yes.

16 Exh. 52, p. 1, pp. 37-38.

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18 Rejecting this claim, the Nevada Court of Appeals reasoned:

19 [Jackson's] counsel testified he reviewed the circumstances related to
20 the search and concluded a motion to suppress was unlikely to be
21 successful. Counsel testified he was retained to negotiate a plea
22 agreement and focused his efforts on that endeavor. Under these
circumstances, Jackson failed to demonstrate it was objectively
unreasonable to decline to file a motion to suppress evidence.

23 In addition, the officer who applied for the search warrant testified at
24 the evidentiary hearing that he did not include anything untrue or omit
25 material facts when he sought the warrant. The record demonstrates that
26 the officers approached the residence due to a call regarding the child's
27 welfare, discovered a methamphetamine pipe when searching pursuant to
28 Jackson's consent, and, following Jackson's withdrawal of consent, the
child's mother advised the officers that Jackson had a substantial amount
of drugs in a lockbox in a bedroom. The search warrant and
accompanying affidavit contained this information. Under these
circumstances, Jackson failed to demonstrate a reasonable probability of

1 a different outcome had counsel sought to suppress evidence obtained
2 pursuant to the search warrant.

3 Exh. 60, p. 4.

4 The fact that Jackson limited the search in some form is not in dispute, thus that is
5 not a material fact that was omitted. This claim is belied by the record. Jackson has not
6 demonstrated that the Nevada Court of Appeal's decision was contrary to or involved an
7 unreasonable application of *Strickland*. 28 U.S.C. § 2254(d). Federal habeas relief is
8 denied as to ground 3.

9 Accordingly, the petition is denied in its entirety.

10 **IV. Certificate of Appealability**

11 This is a final order adverse to the petitioner. As such, Rule 11 of the Rules
12 Governing Section 2254 Cases requires this court to issue or deny a certificate of
13 appealability (COA). Accordingly, the court has *sua sponte* evaluated the claims within
14 the petition for suitability for the issuance of a COA. See 28 U.S.C. § 2253(c); *Turner v.*
15 *Calderon*, 281 F.3d 851, 864-65 (9th Cir. 2002).

16 Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner "has
17 made a substantial showing of the denial of a constitutional right." With respect to
18 claims rejected on the merits, a petitioner "must demonstrate that reasonable jurists
19 would find the district court's assessment of the constitutional claims debatable or
20 wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463
21 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a COA will issue only if reasonable
22 jurists could debate (1) whether the petition states a valid claim of the denial of a
23 constitutional right and (2) whether the court's procedural ruling was correct. *Id.*

24 Having reviewed its determinations and rulings in adjudicating Jackson's petition, the
25 court finds that none of those rulings meets the *Slack* standard. The court therefore
26 declines to issue a certificate of appealability for its resolution of Jackson's petition.

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V. Conclusion


IT IS THEREFORE ORDERED that the petition (ECF No. 8) is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that petitioner's motion for status check (ECF No. 34) and motion for judicial action (ECF No. 35) are both **DENIED** as moot.

IT IS FURTHER ORDERED that the Clerk enter judgment and close this case.

DATED this 5th day of August, 2020.



LARRY R. HICKS
UNITED STATES DISTRICT JUDGE